IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 895/ 2001
(Old No. 3425/1995)

Smt. Manorama Sharma & others
Vs.
Addl. C.J.M. & another

Date of decision:- 18.7.05

A.F.R. (Approved for Reporting)

Not approved for reporting

Initials of Judge

Date:- 18.7.2005

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTARANCHAL AT NAINTIAL

Criminal Misc. Application No. 895 of 2001

{Old No.3425 of 1995}

1. Smt. Manorama Sharma
   W/o Sri Brahmad Swarup
   R/o Azabpur Kalan
   Dehradun.
2. Brahma Swarup Sharma
   S/o Sri Molak Ram
   R/o Azabpur Kalan
   P.O. Dalanwala, Dehradun.
3. Pitambar Dutta Sharma
   S/o Sri Darshan Lal
   R/o Azabpur Kalan
   P.S. Dalanwala
   Dehradun.
4. Alok Sharma @ Lakki Sharma
   S/o Sri Brahma Swarup
   R/o Azabpur Kalan
   Dalanwala, Dehradun
5. Hemchand S/o Sri Antram
   R/o Azabpur Kalan
   Deepnagar
   P.S. Dalanwala, Dehradun
6. Jai Prakash S/o late Darshan Lal
   R/o Azabpur Kalan
   P.S. Dalanwala, Dehradun
7. Kedar Singh Bisht
   S/o Sri Ganga Singh Bisht
   R/o Mata Mandir Road
   Azabpur Kalan
   Dalanwala, Dehradun ……Applicants

Versus

1. Addl. CJM- I, Dehradun
2. Sri Umesh Sharma
   S/o Sri Shivanandan Sharma
   R/o Azabpur Kalan
   P.S. Dalanwala, Dehradun …..Respondents

Date:- 18th July, 2005

Hon'ble J.C.S. Rawat, J.

The petition under section 482 Cr.P.C. was filed for quashing the proceedings in complaint case No. 447/1995 Umesh Sharma Vs. Smt. Manorama &

others pending in the court of Addl. Chief Judicial Magistrate- I, Dehradun.

Heard Sri Dharam Veer learned senior Advocate & Sri Arvind Vashisht learned counsel for the applicants and Sri Sudhir Kumar Chaudhary learned A.G.A. None appeared for the respondent No. 2, despite service.

The factual position in a nutshell is that the respondent No. 2-Umesh Sharma lodged a complaint before the Addl. C.J.M.-Ist, Dehradun under sections 384, 385, 120-B, 500 I.P.C. against the applicants. The said complaint was registered as complaint Case No. 447/1995. Thereafter, the learned Magistrate proceeded under Sections 200 & 202 Cr.P.C. and the summoning order dated 31.8.1995 was passed against the applicants. Feeling aggrieved, the applicants have come up before this Court.

The learned counsel for the applicants contended that the learned Magistrate has passed the summoning order in a mechanical way. The summoning order has been annexed at Annexure- 3 to this petition, which as follows:-

> *''अभियुक्तगण मनोरमा शर्मा ब्रहम स्वरूप शर्मा, पीताम्बर दत्त शर्मा, आलोकर शर्मा, मामचन्द, जय प्रकाश तथा केदार सिंह को धारा 385 व 500 आई0पी0सी0 के आरोपों के लिए दिनांक 9.10.95 के लिए तलब किया जाता है। परिवादी पैरवी अन्दर तीन दिन करें। दिनांक 21–8–95''*

The aforesaid summoning order does not reveal that the learned Magistrate has applied his mind. The learned Magistrate has not mentioned that there is a prima-facie case against the applicants- accused and he has gone through the evidence adduced by the parties. Moreover, the learned Magistrate has not indicated that

how may witnesses have been examined. Perusal of the summoning order reveals that it was passed in a mechanical way. As such, the summoning order dated 31.8.1995 is liable to be quashed.

Therefore, the summoning order dated 31.8.1995 passed by the Addl. Chief Judicial Magistrate-Ist, Dehradun is quashed. The matter is remitted back with the direction that the learned Magistrate will reconsider the evidence and thereafter he will pass the suitable order in accordance with law.

The petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated 18-07-2005
MPS